
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair
2025 - 2026 Regular Session

AB 446 (Ward) - Surveillance pricing

Version: July 17, 2025

Urgency: No

Hearing Date: August 18, 2025

Policy Vote: JUD. 10 - 2

Mandate: No

Consultant: Liah Burnley

Bill Summary: AB 446 prohibits surveillance pricing.

Fiscal Impact:

- The Department of Justice (DOJ) indicates a fiscal impact of approximately \$1 million or less (Unfair Competition Law Fund). DOJ notes that implementation of this bill will be dependent upon the appropriation of funds. DOJ will be unable to absorb the costs to comply with or implement the requirements of the bill within existing budgeted resources. DOJ reports that the Consumer Protection Section (CPS) within the Public Rights Division anticipates increased workloads in enforcing AB 446 beginning on January 1, 2026, and ongoing. The workload includes enforcement AB 446. CPS will require additional resources consisting of 2.0 Deputy Attorneys General (DAGs), 1.0 Associate Governmental Program Analysts (AGPA), 1.0 Special Investigator, and 1.0 Legal Secretary.
- Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate civil actions. Creating a new private cause of action that allows for the recovery of attorney's fees, and authorizing a new civil penalty with significant statutory damages, may lead to additional case filings that otherwise would not have been commenced. Expanding civil penalties and creating new causes of action could lead to lengthier and more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend on many unknowns, including the number of cases filed and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.

Background: As explained in further detail in the Senate Judiciary Committee Analysis of this bill, companies regularly and systematically collect, analyze, share, and sell the personal information of consumers. This systematic data collection is particularly troubling when companies use it to engage in differential pricing for consumers.

Proposed Law:

- Defines "Surveillance pricing" as offering or setting a customized price for a good or service for a specific consumer or group of consumers, based, in whole or in part, on

personally identifiable information collected through electronic surveillance technology. "Surveillance pricing" includes the use of technological methods, systems, or tools, including, but not limited to, sensors, cameras, device tracking, biometric monitoring, or other forms of observation or data collection, that are capable of gathering personally identifiable information about a consumer's behavior, characteristics, location, or other personal attributes, whether in physical or digital environments.

- Provides that a person shall not engage in surveillance pricing.
- Clarifies that a person does not engage in surveillance pricing if any of the following apply:
 - The difference in price is based solely on costs associated with providing the good or service to different consumers;
 - A discounted price is offered based on publicly disclosed eligibility criteria, including, but not limited to, signing up for a mailing list, registering for promotional communications, or participating in a promotional event;
 - A discounted price is offered to members of a broadly defined group, including, but not limited to, teachers, active or retired military, senior citizens, students, or residents of a certain area based on publicly disclosed eligibility criteria;
 - A discounted price is offered through a loyalty, membership, or rewards program that consumers affirmatively purchase or enroll in; or,
 - A discounted price is offered after a consumer directly and knowingly provides specific personally identifiable information for the purpose of obtaining a discount. The nature and purpose of the consumer's disclosure of personal information shall be conveyed in clear and prominent terms in such a manner that an ordinary consumer would notice and understand it; or,
 - The person operates as an insurance institution, as defined, and the pricing is in connection with that activity.
- Provides that a person is not in violation if:
 - The pricing or specific terms of extending credit, the refusal to extend credit on specific terms, or the refusal to enter into a transaction with a specific consumer, is based on information contained in a consumer report, as defined; or,
 - The pricing or specific terms of extending credit, the refusal to extend credit on specific terms, or the refusal to enter into a transaction with a specific commercial enterprise, is based on information contained in a commercial credit report.

- Provides that a discounted price shall comply with all of the following conditions:

- The eligibility criteria, available discounts, and any conditions for receiving or earning the discount or reward shall be clearly and conspicuously disclosed before any personally identifiable information is collected;
- The discount or reward shall be uniformly offered or made available to all consumers who meet the disclosed eligibility criteria;
- Any personally identifiable information provided for the purpose of receiving a discounted price is not augmented or supplemented by personally identifiable information obtained from a third party or other means; and,
- Any personally identifiable information shall be used solely for the purpose of offering or administering the applicable discount, cost-based pricing, or loyalty program, and shall not be used for any other purpose, including, but not limited to, profiling, targeted advertising, or individualized price setting.
- Authorizes the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, or by a county counsel of any county within which a city has a population in excess of 750,000, any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, to bring an enforcement action in any court of competent jurisdiction.
- Provides that, in addition to any other remedy at law, a person that violates these provisions shall be liable for the following civil penalties:
 - A civil penalty not to exceed twelve \$12,500 for each violation, with each violation of this part constituting a separate violation with respect to each consumer or transaction involved;
 - For an intentional violation, a civil penalty no greater than three times the amount of the penalty assessed and all revenues earned from the violation;
 - Reasonable attorney's fees and costs; and,
 - Injunctive or declaratory relief as necessary.
- Authorizes a consumer to bring an action for injunctive relief as necessary to enforce and to remedy any violation. A prevailing plaintiff shall be awarded reasonable attorney's fees and costs.
- Provides that any waiver of these provisions is against public policy and is void and unenforceable.

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